

# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Property Owner Hearing, Consider Adoption of Resolution Expressing Need for City to Exercise the Powers of a Parking Authority, and Resolution of Public Interest and Necessity, thereby formally Authorizing the Acquisition of Property located at 15 West Elm Street for Parking Facilities

**MEETING DATE:** March 3, 1999

**PREPARED BY:** City Attorney

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**RECOMMENDATION:** That the City Council adopt Resolution of Authority and Resolution of Public Interest and Necessity, thereby formally authorizing the acquisition of property through the eminent domain process.

**BACKGROUND:** The purpose of this agenda item is twofold.

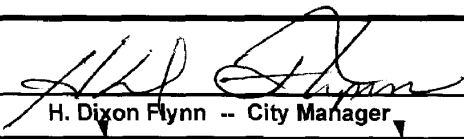
First, it is designed to provide the property owner the opportunity to appear and be heard on those topics contained in the Code of Civil Procedure (CCP) §1240.030. This requirement to afford the property owner this opportunity to be heard is found in CCP §1245.235.

The topics found in CCP §1240.030 that may be addressed by the property owner are as follows: a) does the public interest and necessity require the project? b) is the project planned or located in the manner that will be most compatible with the greatest possible good and the least private injury? and c) the property sought to be acquired is necessary for the project. The amount of compensation to be paid for the property is not a proper subject for this hearing. A property owner will often bring compensation up however.

In order to appear and be heard as outlined in the previous paragraph, a property owner is required to file a written request to appear within fifteen (15) days after the Notice of Hearing was mailed. Failure to file such a request, results in a waiver of the right to appear and be heard (CCP §1245.235 (b)(3)). The property owners, Frank N. and Frank C. Hall were notified of this requirement in the letters sent to them. Copies of those letters are attached. No written request to appear has been received within the required time frame.

The second purpose is to adopt a resolution establishing the need of the City to exercise the powers of a parking authority. By doing so, the Council establishes clear statutory authority upon which the use of the power of eminent domain can be based. Streets and Highways Code §32802 (b), part of the Parking Law of 1949, clearly sets forth that the acquisition of property for parking purposes is authorized. Adoption of

APPROVED: \_\_\_\_\_

  
H. Dixon Flynn -- City Manager

the proposed resolution gives the City the authority to exercise all of the powers granted by the Parking Law of 1949.

As can be seen from this memo the eminent domain process is governed by express statutory provisions. CCP §1245.240 specifically requires that a resolution of public interest and necessity be adopted by a two-thirds vote of all the members of the City Council. Since two-thirds of five is a number greater than three, it takes four affirmative votes to adopt the required resolution.

In addition to the attached letters, you will find a memo from Rad Bartlam, Community Development Director, discussing the project and the need for the project. Staff will make a short presentation relative to the project.


**FUNDING:** Not applicable.

Respectfully submitted,

  
Randall A. Hays, City Attorney



**MEMORANDUM, City of Lodi, Community Development  
Department**

**To:** City Attorney  
**From:** Community Development Director   
**Date:** February 22, 1999  
**Subject:** Project Information for the Elm Street Parking Lot

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As a component of the Downtown revitalization strategy, an assessment of public parking availability has occurred. In general, areas within the downtown lack sufficient parking for the uses that exist today and those that will potentially exist in the future. One such area lies in the Elm Street corridor between Sacramento and Church Streets.

After a thorough review of the potential sites in the above-mentioned area, the properties located at 11, 15, and 17 West Elm were determined to be the most suitable for additional parking development. A categorical exemption of environmental impact was completed relative to the development of a grade-level parking lot utilizing these properties. The three properties are currently either vacant, abandoned, or under utilized. In particular, 11 West Elm Street is occupied by a severely fire-damaged structure that fell into foreclosure last year. The property is currently being offered for sale by the financial institution that took it over. The subject property at 15 West Elm contains a vacant 850 square-foot commercial storefront and vacant attached apartment. Both of these structures are in need of substantial repairs. The third property is vacant and includes a ten-foot-deep excavation. This property is also listed for sale by the property owner.

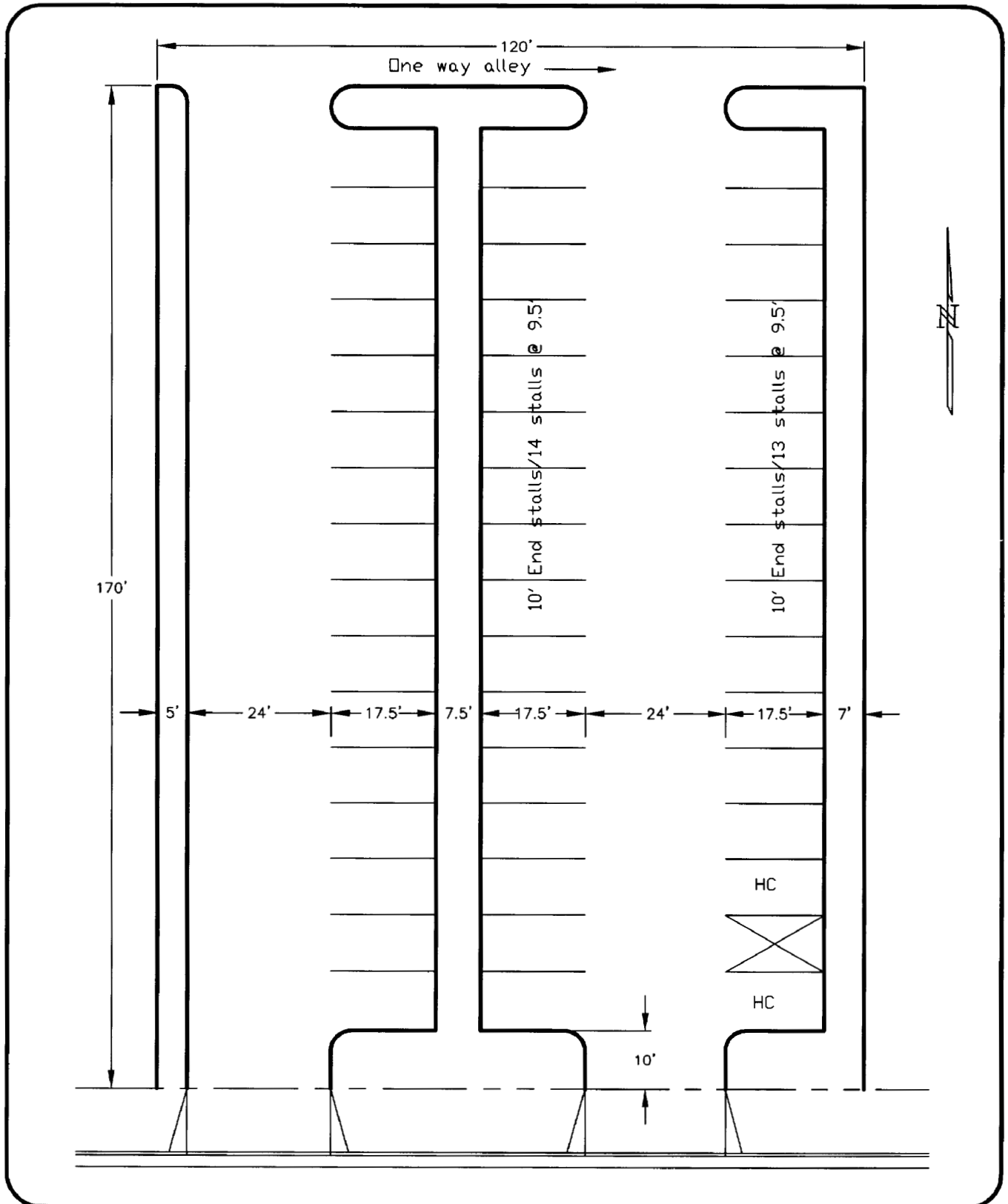
As mentioned, it has been determined that additional public parking in the downtown is needed for the continuing revitalization of this area. The subject property, which contains 5,100 square-feet, lies in the middle of the proposed parking lot. The two adjoining parcels (8,500 and 6,800 square-feet respectively) are also required in order to construct the fifty (50) stall lot as shown on Exhibit "A." Based on the parcel configuration, the parking lot would not be able to be constructed without the subject property. The owners of the adjacent properties have tentatively agreed to the purchase of their properties by the City of Lodi for this project.

Attachment



**CITY OF LODI**  
PUBLIC WORKS DEPARTMENT

**11,15,17  
W. ELM STREET**



When Recorded, Return to:  
City of Lodi  
City Clerk's Office  
P.O. Box 3006  
Lodi, CA 95241-1910

RESOLUTION NO. 99-39

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
LODI FINDING THAT PUBLIC INTEREST AND NECESSITY  
REQUIRE THE ACQUISITION FOR PUBLIC PARKING  
PURPOSES PROPERTY OWNED BY FRANK N. HALL AND  
FRANK C. HALL, COMMONLY REFERRED TO AS  
ASSESSOR'S PARCEL NUMBER 043-026-11 (15 WEST ELM  
STREET)

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BE IT RESOLVED by the City Council of the City of Lodi (hereinafter referred to as "City") as follows:

Section 1. The City finds and determines that public interest and necessity require the development of parking facilities by the City of Lodi, through the acquisition for such purpose the fee title interest in real property owed by Frank N. Hall and Frank C. Hall, commonly referred to as A.P.N. 043-026-11.

Section 2. Section 32802(b) of the California Streets and Highways Code authorizes the City to acquire the necessary real property interest for said parking facilities by eminent domain.

Section 3. An offer required by §7267.2 of the Government Code has been made to the owners of record of the real property sought to be taken by these eminent domain proceedings.

Section 4. The City finds and determines that the subject project has been planned and is to be located in the manner that will be most compatible with the greatest public good and the least private injury.

Section 5. The City finds and determines that the acquisition of the real property interest depicted in Exhibits "A" and "B" attached hereto, situate in the City of Lodi, County of San Joaquin, State of California, is necessary for the construction and maintenance of the aforesaid public improvement, and the taking of said real property interest is necessary therefor.

Section 6. The City hereby ratifies the categorical exemption prepared for this project.

Section 7. The City Attorney of the City of Lodi is hereby authorized, empowered, and directed to perform as follows:

- a. Commence an action or actions in eminent domain in the Superior Court of the State of California, County of San Joaquin, in the name of the City of Lodi to acquire necessary real property interests; and
- b. To incur in the name of the City of Lodi, and on behalf thereof, all obligations and expenses necessary to acquire the above-mentioned real property interests.

Section 8. The City Clerk of the City of Lodi is hereby directed to cause a certified copy of this Resolution to be recorded in the office of the San Joaquin County Clerk/Recorder.

Dated: March 3, 1999  
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I hereby certify that Resolution No. 99-39 was introduced and read by the City Council of the City of Lodi in a regular meeting held March 3, 1999, and was duly adopted at said meeting by a four-fifths vote as follow:

AYES: COUNCIL MEMBERS – Hitchcock, Mann, Nakanishi, Pennino and Land (Mayor)  
NOES: COUNCIL MEMBERS – None  
ABSENT: COUNCIL MEMBERS – None  
ABSTAIN: COUNCIL MEMBERS – None

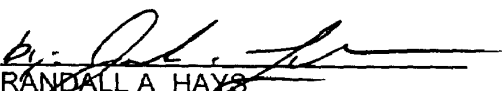


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KEITH LAND, Mayor  
City of Lodi

Attest:

  
ALICE M. REIMCHE  
for City Clerk

APPROVED AS TO FORM:

  
RANDALL A. HAYS  
City Attorney

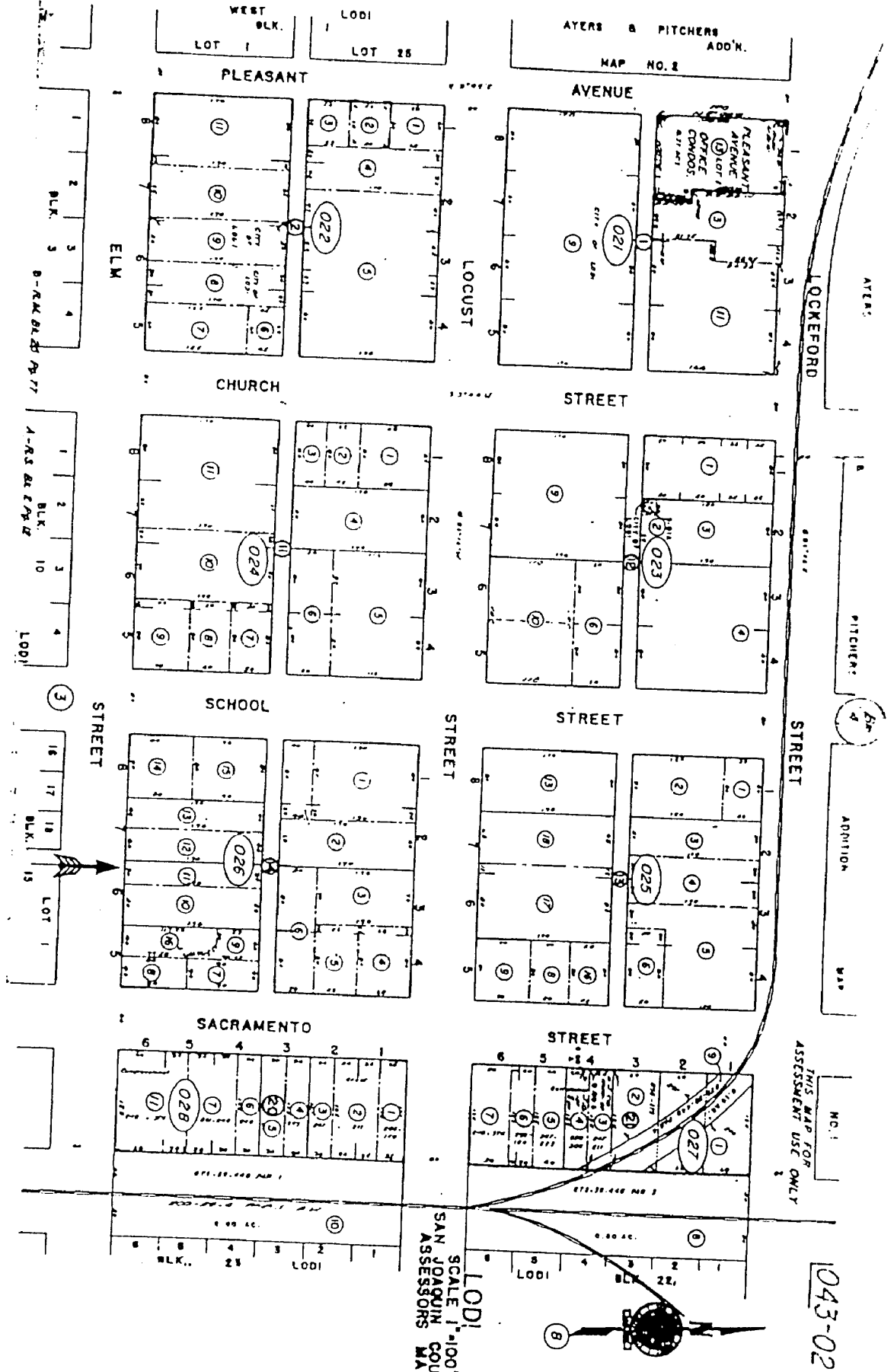
## **EXHIBIT A**

### **ACQUISITION FOR PARKING FACILITIES**

That real property situate in the City of Lodi, County of San Joaquin, State of California, more particularly described as follows:

The West 30 feet of Lot 6 in Block 14 of City of Lodi (formerly Mokelumne) according to the Official Map thereof filed for Record in Vol. 2 of Maps, Page 12, San Joaquin Records.

# EXHIBIT B



**IMPORTANT.** This is not a Plat of Survey. It is furnished as a convenience to locate the land indicated hereon with reference to streets and other land. No liability is assumed by reason of reliance hereon.



RESOLUTION NO. 99-41

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
LODI DECLARING THE NEED FOR THE CITY TO EXERCISE  
THE POWERS OF A PARKING AUTHORITY PURSUANT TO  
THE PARKING LAW OF 1949 (GOVERNMENT CODE §32500  
ET SEQ.)

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WHEREAS, the City has made capitol improvements to the downtown business area designed to make the area more attractive to businesses and the general public; and

WHEREAS, the downtown core area has seen an increase in occupancies; and

WHEREAS, the Hotel Lodi renovation project for senior housing has been completed; and

WHEREAS, parking needs in the downtown core area need to be addressed; and

WHEREAS, the Parking Law of 1949 (Government Code §32500 et seq.) sets forth in §33552 that a City may exercise all of the powers set forth in said law; and

WHEREAS, §32654 requires that the City adopt a resolution expressing the need for the City to exercise the powers of the law.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi that the parking needs in the downtown core are increasing. Therefore there is a need for the City to exercise the powers of a parking authority as provided for in the Parking Law of 1949.

Dated: March 3, 1999

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I hereby certify that Resolution No. 99-41 was passed and adopted by the City Council of the City of Lodi in a regular meeting held March 3, 1999, by the following vote:

AYES: COUNCIL MEMBERS – Hitchcock, Mann, Nakanishi, Pennino and Land (Mayor)

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

  
ALICE M. REIMCHE  
for City Clerk